Supreme Court, U.S.
FILED

00-1659 MAY 1 - 2001

OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

RONALD J. ALLISON & MARTHA J. ALLISON,

Petitioners,

vs.

THE UNITED STATES OF AMERICA, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE NINTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

For the Petitioners:

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QUESTIONS PRESENTED FOR REVIEW

The Petitioners, RONALD J. ALLISON & MARTHA J. ALLISON, hereby present the following four questions for the review of the decisions of the Ninth Circuit Court of Appeals, below, by the United States Supreme Court:

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE CONDUCT OF THE RESPONDENTS, IS CONTRARY TO AND IN THE DIRECT VIOLATION OF THE RIGHTS AND PROTECTIONS GRANTED THE PETITIONERS BY THE 4TH, 5TH, 7TH AND 10TH ARTICLES IN AMENDMENT TO THE ORIGINAL ORGANIC CONSTITUTION OF THE UNITED STATES OF AMERICA, (U.S.C.A. Constitutional Amendments 4, 5, 7 and 10).

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE CONDUCT OF THE RESPONDENTS IS CONTRARY TO AND IN DIRECT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT, OTHER DECISIONS OF THE NINTH CIRCUIT, AND OTHER CIRCUIT COURTS OF APPEALS DECISIONS.

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE UNIQUE STATUS OF THE PETITIONERS, IS CONTRARY TO AND IN DIRECT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT, OTHER DECISIONS OF THE NINTH CIRCUIT COURT, AND OTHER CIRCUIT COURTS OF APPEALS DECISIONS.

QUESTIONS PRESENTED FOR REVIEW
CONTINUED...

WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS IS ERRONEOUS WITH REGARD TO THE CONDUCT OF THE U.S. IRS, THE U.S. DISTRICT COURT, AND THE MONTANA U.S. BANKRUPTCY COURT BELOW, AS TO VIOLATIONS OF STATUTORY LAW AND RELEVANT RULES AND REGULATIONS.

PARTIES TO THE PROCEEDING

This case was originally initiated by the Debtors, RONALD J. ALLISON & MARTHA J. ALLISON, in the United States Bankruptcy Court for the District of Montana, as Cause No. 97-12264-7. As a result of actions taken by the U.S. Internal Revenue Service and the Boilermaker-Blacksmith National Pension Trust, after the dismissal of the Bankruptcy Proceeding, the Allisons were allowed to reopen their Bankruptcy Proceeding and were allowed to file a Bankruptcy Adversarial Proceeding, Case No. 98-00102. The parties to the action as identified then, and which remain parties to the action, now, are:

RONALD J. ALLISON & MARTHA J. ALLISON,

Plaintiffs,

vs.

UNITED STATES OF AMERICA, U.S. INTERNAL REVENUE SERVICE, AND THE BOILERMAKER-BLACKSMITH NATIONAL PENSION TRUST,

Defendants.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners, RONALD J. ALLISON & MARTHA J. ALLISON, both appearing Pro Se, in the above-entitled cause of action, respectfully pray that a WRIT OF CERTIORARI issue from the United States Supreme Court, to review the MEMORANDUM of the Ninth Circuit Court of Appeals, issued by the three judge panel of Justices Wallace, Fernandez and McKeown, dated September 26, 2000, as well as the ORDER of the Ninth Circuit Court of Appeals, three judge panel of Justices Wallace, Fernandez and McKeown, dated January 2, 2001, in Ninth Circuit Court Case No. 99-35949.

OPINIONS BELOW

MEMORANDUM, dated September 26, 2000, and ORDER, dated January 2, 2001, both issued by the three judge panel of Justices Wallace, Fernandez and McKeown, of the Ninth Circuit Court of Appeals, were both issued as unpublished opinions of the Ninth Circuit Court of Appeals. Both MEMORANDUM and ORDER appear in the APPENDIX to this PETITION FOR WRIT OF CERTIORARI.

Also included in the APPENDIX are ORDERS of the United States District Court for the District of Montana, Judge Shanstrom presiding, in the underlying cause of action, No. CV-98-181-BLG-JDS, issued respectively, on April 16, 1999, July 20, 1999, and February 21, 2001. That case resulted from an appeal from the United States Bankruptcy Court for the District of Montana, Judge Peterson presiding, in Bankruptcy Case No. 97-12264-7/Adversarial

Proceeding Case No. 98-00102. The Bankruptcy Court's ORDER AND JUDGMENT, issued on December 4, 1998, also appears in the APPENDIX to this PETITION FOR WRIT OF CERTIORARI.

In addition, as there is a question of the timeliness of the appeal from the Bankruptcy Court to the United States District Court for the District of Montana, the NOTICE OF REFERRAL OF APPEAL issued by the Clerk, U.S. Bankruptcy Court for the District of Montana in Case No. 97-12264-7/ Adversarial Proceeding No. 98-00102, issued on December 16, 1998, is included in the APPENDIX.

Also included in the APPENDIX to the PETITION FOR WRIT OF CERTIORARI is a Letter from the Clerk of the United States Supreme Court, which extending the time to file PETITION FOR WRIT OF CERTIORARI until May 2, 2001. Said letter is dated April 4, 2001.

JURISDICTION

The unpublished MEMORANDUM of the three judge panel of Justices Wallace, Fernandez and McKeown, of the Ninth Circuit Court of Appeals was entered September 26, 2000. A timely Petition for Rehearing, by the three judge panel, was filed, pursuant to Rule 40, Federal Rules of Appellate Procedure, October 19, 2000. The Petition for Rehearing by the Panel was denied January 2, 2001.

Allisons, the Petitioners, filed a Notice of Intent to Petition for Rehearing, En Banc, January 16, 2001, pursuant to Rule 35, Federal Rules of Appellate Procedure and Ninth Circuit Rule 35. On January 30, 2001, the Petition for Rehearing, En Banc, pursuant to Rule 35 of the Federal Rules of Appellate Procedure and Ninth Circuit Rule 35, was filed. No response to

this Petition for Rehearing, En Banc, has ever been received from the Ninth Circuit Court of Appeals.

Subsequently, Allisons, made application to Justice O'Connor of the United States Supreme Court for an extension of time to file their Petition for Writ of Certiorari, pursuant to Supreme Court Rules. That application was made on March 21, 2001.

On April 4, 2001, the Clerk of the United States Supreme Court issued a letter extending the time in which to file a Petition for Writ of Certiorari, until May 2, 2001. This PETITION FOR WRIT OF CERTIORARI was filed prior to the May 2, 2001, the deadline given in the Clerk's letter.

The jurisdiction of the United States Supreme Court is now invoked under Section 28 U.S.C. 1254(1).

STATEMENT OF THE CASE

From a factual standpoint, this case effectively began with the wrongful and illegal search for and seizure of Allisons' real and personal properties by the United States IRS on March 6, 1997. That day, armed IRS and ATF agents searched Martha Allison's solely-owned real property for personal and business property of Ronald J. Allison. Upon conclusion of their search, they seized not only Ronald J. Allison's business and personal property, including tools, equipment, inventory and supplies of his muffler repair and installation business, but also the building and land owned solely by Martha J. Allison.

Allisons maintained, from the outset, and throughout the progression of these proceedings, that the actions of IRS against them, personally, and against their properties, both real and personal in

nature, were both wrongful and illegal, including the fact that the IRS search and seizure was conducted without a valid Search Warrant or any Court Summons. Only a Writ of Entry was obtained by the U.S. Attorney for Montana from U.S. District Judge Jack Shanstrom.

For several years, IRS had asserted various claims against only Ronald J. Allison (never Martha J. Allison), for allegedly delinquent federal income taxes. On several occasions prior to the illegal search and seizure on March 6, 1997, Ronald J. Allison had directly challenged any valid legal authority, jurisdiction, and venue of IRS over him and his properties. When Allison did so challenge that authority, he never received a response. The only IRS response was to obtain the "Writ of Entry" from Judge Shanstrom.

Under the alleged authority of the "Writ of Entry", and under "color of law", IRS then searched real property in Forsyth, Rosebud County, Montana, which belonged solely to Martha J. Allison, (the innocent spouse), allegedly looking for any personal property belonging to Ronald J. Allison. While IRS had no valid claims or controversies against Martha J. Allison (and they still do not), they seized not only personal property of Mr. Allison, but the solely owned and held real property of Mrs. Allison.

That seizure was allegedly made under an "alter ego" or "nominee" status designation made by a lone IRS Agent, Bouldin, the same IRS Agent with whom Mr. Allison had previously challenged IRS's legal authority, jurisdiction, and venue. Mrs. Allison's "status" determination was made directly as the result of and in retribution for Mr. Allison's challenges.

Upon completion of the search, IRS seized Mrs. Allison's solely-owned real property and the building located thereon. IRS also seized Mr. Allison's muffler shop equipment, tools, machinery, and inventory. The total value of the seizure was placed between $50,000.00 and $100,000.00 by Allisons.

Several months later, IRS, using a substantially undervalued (and disputed) appraisal process, the real and personal properties were wrongfully and illegally sold. IRS used an out-of-county (Yellowstone County, Montana) sealed bid sale to sell Rosebud County property. That sale was conducted in violation of IRS statutory authority and without valid delegation orders. Later, through Court action, Allisons learned that the "Notices of Sale" documents issued, published, and posted were fraudulent and falsified by IRS Group Manager Yurt. The real property involved was sold to the City of Forsyth, Montana, for the minimum bid price. The personal and business property seized was sold to a Larry Burns also at the minimum bid price. Those sales do constitute an illegal conversion of Allisons' properties.

Due to the illegal actions of IRS during the search, seizure and sale, Allisons had no alternative but to seek the protection of the Bankruptcy Court. On August 26, 1997, Allisons filed a Voluntary Petition for Bankruptcy with the United States Bankruptcy Court for the District of Montana, which became Cause No. 97-12264-7 in that Court (See BR-1, Excerpts of Record, filed in the Ninth Circuit Appeals case). Allisons notified IRS of their action and sought to have IRS file claims to determine tax liability. (See BR-5 and BR-8). Allisons again challenged the authority, jurisdiction, and venue of IRS. (See BR-6). The Court denied the demand as being improper at that time.

(See BR-7) Allisons then did demand the production of IRS documents (See BR-8) with no response.

On December 16, 1997, the Bankruptcy Court discharged the joint debtors, Allisons. (See BR-9). It also, on December 22, 1997, denied the demands for IRS records. (See BR-10). Allisons sought to require the Bankruptcy Trustee to take action to deal with IRS claims. (See BR-11). No action was taken, but a Final Decree was issued in No. 97-12264-7 on January 26, 1998.

In June of 1998, the Boilermaker-Blacksmith National Pension Trust ("Trust) notified Allison that IRS had issued a "Notice of Levy" to them and that they were withholding his pension checks to satisfy IRS. Allison responded, providing documentation of the Court action in the bankruptcy case. (See BR-13). When the Trust began withholding Mr. Allison's monthly pension checks, he sought to reopen the bankruptcy action (BR-14) which was granted. Allisons also possessed the Release of Levy, dated September 3, 1997, sent to the Boilermakers. Case reopened July 29, 1998.

Next, Allisons filed their Adversarial Proceeding, Case No. 98-00102, in which they sought damages and temporary restraining orders and permanent injunctions for the United States of America, the U.S. IRS, and the Trust preventing the Trust from withholding any further monthly trust payments from Mr. Allison. That Complaint was filed August 31, 1998. (See ADVP-1). TROs and Permanent Injunctions were sought (See ADVP-4), and Allisons sought to proceed with discovery (See ADVP-7). Allisons also now possessed another Form 668-D Release of Levy/ Release of Property from Levy, dated September 4, 1998, sent to the Trust, as well as more "Final Notices"

from IRS. The Court denied the TROs and set the only hearing ever held in this matter. (See ADVP-5).

On November 9, 1998, the Bankruptcy Court held the only formal hearing held in this case. (See Transcript at ADVP-11). Only Allison testified. Deputy U.S. Attorney Francis appeared, as did Karl Englund for the Trust. Only two exhibits were admitted regarding the Social Security system. (ADVP-11). IRS submitted a post-hearing brief, wherein Allisons discovered the Delegation Orders and Sealed Bid Sale notices of IRS had been fraudulently prepared and were falsified before submission. (See ADVP-13). IRS Group Manager Yurt did not have delegation authority and had not approved the out of county sale. Due to the newly discovered fraudulent "Notices of Sale" and Delegation Orders, Allisons provided the Court a Supplemental Memorandum (See ADVP-14) and a Reply to the U.S. IRS post-hearing brief, including copies of the Original Sealed Bid Sale documents for the Court to examine. (See ADVP-15).

On December 4, 1998, Bankruptcy Judge Peterson issued his 23 page Order and Judgment. That decision was appealed by Allisons. (See ADVP-16, 17 and Appendix A-7).

On December 11, 1998, Allisons filed their Notice of Appeal under 28. U.S.C. 158(a), and made their election to have the appeal heard by the Montana U.S. District Court rather than by the Bankruptcy Appellate Panel Service. (See ADVP-18 and Appendix A-8). An examination of the Appendix will show the Appeal was timely and within the 10 day time limit.

The Appeal to the U.S. District Court for Montana became Case No. CV-98-181-BLG.

Unfortunately for Allisons, the judge assigned to hear this matter was the very same Judge Shanstrom who, in the first instance, granted IRS its "Writ of Entry" used to search and seize Allisons' properties, which forced Allisons to seek the relief of the Bankruptcy Court. Allisons immediately sought to have Shanstrom either recuse himself, or to have him disqualified. (See DCA-1). Shanstrom refused to recuse himself, and the disqualification motion as never dealt with. The entire record, on appeal, from the Bankruptcy Court was not provided to the District Court on appeal. (See DCA-7). The Docket Sheet indicates the entire record below, and the exhibits were not before the District Judge, on appeal. No Oral Argument was allowed, and the Court had an incomplete record.

On April 16, 1999, Shanstrom, sitting as an appeals judge, in this appeal from Bankruptcy Court, issued his initial Order, which included an Order for Allison to pay attorney's fees to the Trust for the bankruptcy case. (See DCA-10 and Appendix A-4). Allisons opposed costs sought by the Boiler-makers, and the District Court Order. On July 20, 1999, Shanstrom issued another Order and partially addressed the issue of the costs and attorney's fees originally granted to the Trust. (See DCA-12 and Appendix A-5). The issue of the timeliness of the appeal from Bankruptcy Court to the U.S. District Court was never challenged by any party during the District Court appeal. The record reflects the appeal was timely. (Appendix A-9 and A-10).

Given the results of the District Court appeal, where Shanstrom sat in appellate judgment on matters he previously decided at the trial court level, Allisons were forced to appeal to the Ninth Circuit. Allisons filed a timely initial joint expanded opening

appeals brief in April 2000, and after the United States/U.S. IRS filed a Response Brief, they filed a timely joint reply brief on July 21, 2000.

In their Response, IRS raised, for the first time, the issue of timeliness of appeal from the Bankruptcy Court to the U.S. District Court. They maintained the appeal was not perfected in the ten day time limit. Allisons responded to that argument, with the documents to prove otherwise. (See ADVP-16, 17, 18 and Appendices A-7 through A-10).

On September 26, 2000, the Ninth Circuit three judge panel issued their unpublished MEMORANDUM in Case No. 99-35949. In that MEMORANDUM, the panel bought the timeliness argument of IRS and found that Bankruptcy Appeal to the U.S. District Court not timely, effectively getting Shanstrom off the hook. (See Appendix A-1).

Allisons first sought a rehearing, by the panel, addressing timeliness of appeal from Bankruptcy Court to the U.S. District Court. A timely petition for rehearing, by the three judge panel was filed, by Allisons, pursuant to Rule 40 of the Federal Rules of Appellate Procedure, on October 19, 2000. Petition for a panel rehearing was denied on January 2, 2001. (See Appendix A-2).

Allisons then sought an En Banc Rehearing, filing a Notice of Intent to Petition for Rehearing En Banc on January 16, 2001. On January 30, 2001, Allisons filed a Petition for Rehearing En Banc pursuant to Rule 35, Federal Rules of Appellate Procedure. As of the date of the filing of this Petition for Writ of Certiorari, no response to the Petition for a Rehearing En Banc has ever been received from the Ninth Circuit by Allisons.

To protect their right of appeal, Allisons made application to Justice O'Connor, of the Supreme Court, for an extension of time to file a Petition for Writ of Certiorari, pursuant to Rules of the United States Supreme Court, on March 21, 2001.

On April 4, 2001, the Clerk of the United States Supreme Court issued a letter notifying Allisons that Justice O'Connor extended the filing time of a Petition for Writ of Certiorari until and including May 2, 2001. This PETITION FOR WRIT OF CERTIORARI was filed prior to the May 2, 2001, deadline given in the Clerk's letter. (See Appendix A-3).

As a result of the above actions by the three judge panel, Allisons have now filed this timely and appropriate PETITION FOR WRIT OF CERTIORARI well within the May 2, 2001, deadline given by Justice O'Connor, in the Supreme Court.

REASONS FOR GRANTING THE WRIT

The Petitioners, RONALD J. ALLISON & MARTHA J. ALLISON, have formulated the following four reasons as to why the United States Supreme Court should grant them a WRIT OF CERTIORARI to review the decisions of the Ninth Circuit three judge panel in this case. Those are:

(A) WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE CONDUCT OF THE RESPONDENTS, IS CONTRARY TO AND IN DIRECT VIOLATION OF THE RIGHTS AND PROTECTIONS GRANTED THE PETITIONERS BY THE 4TH, 5TH, 7TH AND 10TH ARTICLES IN AMENDMENT TO THE ORIGINAL ORGANIC CONSTITUTION OF THE UNITED STATES OF

AMERICA, (U.S.C.A. Constitutional Amendments 4, 5, 7 and 10).

(B) WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE CONDUCT OF THE RESPONDENTS IS CONTRARY TO AND IN DIRECT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT, OTHER DECISIONS OF THE NINTH CIRCUIT, AND OTHER CIRCUIT COURTS OF APPEALS DECISIONS.

(C) WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS, REGARDING THE UNIQUE STATUS OF THE PETITIONERS, IS CONTRARY TO AND IN DIRECT CONFLICT WITH RELEVANT DECISIONS OF THIS COURT, OTHER DECISIONS OF THE NINTH CIRCUIT COURT, AND OTHER CIRCUIT COURTS OF APPEALS DECISIONS.

(D) WHETHER THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS IS ERRONEOUS WITH REGARD TO THE CONDUCT OF THE U.S. IRS, THE U.S. DISTRICT COURT, AND THE MONTANA U.S. BANKRUPTCY COURT BELOW, AS TO VIOLATIONS OF STATUTORY LAW AND RELEVANT RULES AND REGULATIONS.

(A) CONSTITUTIONAL VIOLATIONS

Allisons have alleged that conduct of the Respondents, in particular the United States and its federal agency, the IRS, have violated the protections and rights granted Allisons by several Articles in Amendment to the Original Organic Constitution of the

United States of America. (U.S.C.A. Const. Amendments).

Thus, it is imperative for this Court, on Certiorari review of the Ninth Circuit Court panel's MEMORANDUM, to return to and revisit the foundation and basis for our entire legal system, the Original Organic Constitution of the United States of America, and to those Articles in Amendment to that Constitution (as opposed to the provisions of the federal [United States] constitution). Our Original Organic Constitution is the basis for statutory and case law. All laws passed must ultimately pass Constitutional muster if they are to survive judicial scrutiny. Allisons have alleged violations of specific Constitutional sections, including: Article I, Section 8, Clause 1; Article I, Section 9, Clause 4; and, Article VI, Clause 2; of the Original Organic Constitution of the United States of America.

Article I, Section 8, Clause 1, states in pertinent part: "Section 8. The Congress shall have Power to lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common defence and general Welfare of the United States; but all Duties, Imposts, and Excises shall be uniform throughout the United States;"

Article I, Section 9, Clause 4, states in pertinent part: "Section 9. . .No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or enumeration herein before directed to be taken."

Furthermore, Article VI, Clause 2, states in pertinent part:

> "This Constitution, and all Laws of the United States which shall be made in Pursuance

thereof; all treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding."

Also, Allisons maintain that conduct of the federal government's IRS violated their rights under the 4th, 5th, 7th and 10th Articles in Amendment to the Original Organic Constitution of the United States of America (U.S.C.A. Const. Amend. 4, 5, 7 and 10), part of the "Bill of Rights" ratified in 1791.

Article in Amendment IV, states as follows:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." (See also U.S.C.A. Constitutional Amendment 4).

Article in Amendment V, states in its entirety as follows:

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness

> against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." (See also U.S.C.A. Constitutional Amendment 5).

Article in Amendment VII, dealing with the right to a trial by a jury of one's peers states in its entirety:

> "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of common law." (See also U.S.C.A. Constitutional Amendment 7).

Article in Amendment X, also a part of the "Bill of Rights" states in its entirety, as follows: "The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people." (See also U.S.C.A. Constitutional Amendment 10).

Allisons maintain conduct of the United States (federal government) and IRS violated protections and rights granted to Allisons and specifically the 4th, 5th, 7th and 10th Articles in Amendment to the Original Organic Constitution of the United States of America, as well as provisions of the 14th and 16th Amendments to the United States Constitution. Those Constitutional provisions are the supreme law of the land and cannot be overridden by any laws passed by Congress [statutory law] or any law propounded by any Court [case law].

All statutes and case law must first be squared with the Constitution itself and with the Articles in Amendment to that Constitution. Any laws found to be unconstitutional or in violation of the Constitution, are then, in effect, deemed "null and void". The case of Marbury v. Madison, (1803), first stated that principle when the Supreme Court held that:

> "It is also not entirely unworthy of observation that in declaring what shall be the supreme law of the land, the Constitution itself is first mentioned, and not the laws of the United States, generally, but those only which shall be made in pursuance of the Constitution have that rank. Thus, the particular phraseology of the Constitution of the United States confirms and strengthens the principle, supposed to be essential to all written constitutions, that a law repugnant to the Constitution is void and that the courts, as well as other departments, are bound by that instrument."

The decision of the Ninth Circuit panel, in its MEMORANDUM, does not pass Constitutional muster.

It remains an incontrovertible fact that the 16th Amendment to the Constitution, by virtue of its language, is an "excise tax". A comprehensive examination of the legislative history and intent indicates clearly that the 16th Amendment was enacted by Congress to tax corporations and other artificial entities, which are creations of government and subject to the rules, and regulations of the government for their existence. The 16th Amendment is being fraudulently applied to individuals, like Allisons, when it is, in reality, a corporation excise tax.

To truly understand the 16th Amendment, one must examine Congressional Record-Senate, p. 1568, April 28, 1909, regarding Senate Joint Resolution 25; p. 3377, June 17, 1909, regarding Senate Joint Resolution 39; pp. 3344-3345, June 16, 1909, regarding President Taft's address to Congress (outlining the requirements for passing the 16th Amendment); and, p. 3900, June 28, 1909, regarding the language of Senate Joint Resolution 40, which became the 16th Amendment. That language follows:

> "Article XVI. The Congress shall have the power to lay and collect taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration."

Yet, the federal government wants us to believe the 16th Amendment somehow negated the power of Article I, Section 9, Clause 4, of the Original Organic Constitution of the United States of America. It did not. The passage of the 16th Amendment did not extend the taxing powers of the federal government to new or excepted subjects. See Stanton v. Baltic Mining Co., 240 U.S. 103; Peck v. Lowe, 247 U.S. 165, Eisner v. MaComber, 252 U.S. 189, and Brushaber v. Union Pacific Railway Co., 240 U.S. 1. Allison, a natural born, sovereign citizen and resident of the state of Montana, and a non-taxpayer, cannot have the federal government's 16th Amendment corporate excise tax legally applied to him. He does not qualify. Such application is fraudulent and unconstitutional as to him, given his unique status. See Pollock v. Farmers Loan & Trust Co., 157 U.S. 429, and Miller v. Standard Nut & Margarine Co., 284 U.S. 498.

It should be abundantly clear, from the standard set in G.M. Leasing v. United States, 429

U.S. 338, that the warrantless search and seizure of Allisons' properties was in direct violation of Articles in Amendment 4 and 5. By dismissing this action without a trial, both the Bankruptcy Court and the U.S. District Courts below denied Allisons their 7th Article in Amendment right to trial by jury. Jury trial was demanded by Allisons in their Complaint. Yet, this case was decided solely on the briefs and one short motions hearing. No trial was held at the trial level in the Adversarial Proceeding in the U.S. Bankruptcy Court, even though that Court is an Article III Court with such powers and jurisdiction. Article III of the Constitution states, in pertinent part, as follows:

> "Section 1. The judicial Power of the United States, shall be vested in one Supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish...
>
> Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--...to Controversies to which the United States shall be a Party;"

Bankruptcy Court was an Article III Court, which did have jurisdiction and full authority to decide and adjudicate all the issues before it.

Finally, Allisons contend Constitutional powers not given the federal government remain the purview of the States, or the people themselves. The federal government's fraudulent application of federal income tax to individuals like Allison is violation of the 10th Article in Amendment, in that the constitution never granted that authority to the federal government or IRS.

(B) CONFLICT OF LAWS, STARE DECISIS:

Allisons maintain that both material points of fact and relevant legal decisions were overlooked by the Court below, in its MEMORANDUM. Further, they maintain the decision of the three judge panel does conflict with decisions of this Court, and other published decisions of the Ninth Circuit Court and the other circuit courts.

If the concept of "stare decisis", which literally means, "to abide by, or adhere to, decided cases", remains a valid legal principle, then this case, as addressed by the Ninth Circuit's panel clearly deserves a Certiorari review by the Supreme Court.

Black's Law Dictionary, (Fifth Edition) defines "stare decisis" as indicating that it is the "policy of courts to stand by precedent and not disturb a settled point". In Neff v. George, 4 NE 2d 388, 391, that court defined "stare decisis" as a doctrine that: "When a court has once laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle, and apply it to all future cases, where facts are substantially the same; regardless of whether the parties and property are the same." Horne v. Woody, 146 SW2d 505.

One Ninth Circuit case also addresses the principle of "stare decisis". In State v. Mellenberger, 95 P.2d 709, they held:

> "Under doctrine [stare decisis], a deliberate or solemn decision of the court made after argument on a question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent in the same court, or in courts of equal or lower rank in

subsequent cases where the point is again in controversy."

Allisons are adamant that the principles of "stare decisis" and "precedent" are not being adhered to by the courts below.

Allisons are seeking, through this Petition for Certiorari review to have the Supreme Court determine if the MEMORANDUM is in conflict with and contrary to other relevant cases. The cases presented below have previously been presented in the courts below. Specific cases the Allisons maintain are in conflict with the panel decision below include: Bevins v. Six Unknown Federal Narcotics Agents, 403 U.S. 338; Boethke v. Fluor Engineers & Constructors, Inc., 713 F.2d 1405 (9th Cir. 1983); Economy Plumbing & Heating Co. v. United States, 470 F.2d 585 (1982); General Motors Leasing Corp. v. United States, 429 U.S. 338; and Long v. Rasmussen, 281 F.2d 236, (a case originating in the Montana U.S. District Court, but still good law.) Others include: Brushaber v. Union Pacific Railway, 240 U.S. 1; Eisner v. MaComber, 252 U.S. 189; Liljeberg v. Health Services Acquisition Corp., 108 S.Ct. 2194; Miller v. Standard Nut & Margarine Co., 284 U.S. 498; Peck v. Lowe, 247 U.S. 165; Pollock v. Farmers Loan & Trust Co., 157 U.S. 429; See v. City of Seattle, 382 U.S. 541; Stanton v. Baltic Mining Co., 240 U.S. 103; and Thatcher v. Powell, 6 Wheat 119. Others include Cohens v. Virginia, 19 U.S. (6 Wheat 264); Commissioner v. Shapiro, 424 U.S. 614; Edwards v. Cuba RR, 45 S.Ct. 614; Garner v. United States, 424 U.S. 648; Laing v. United States, 423 U.S. 184; United States v. Sullivan, 274 U.S. 259; and U.S. ex. rel. Accardi v. Shaughnessy, 347 U.S. 260. These U.S. Supreme Court cases, are authoritative case law. They

are precedent, and "stare decisis" should require their application to the case at bar by the Ninth Circuit.

In addition, there are numerous Circuit Court cases previously cited by Allison in the courts below, but which have not been considered. Those cases include: United States v. Bosurgi, 530 F.2d 1105; Schering Corp. v. Home Insurance Co., 717F.2d 4; CMS Industries, Inc. v. L.P.S. International, 643 F.2d 289; Reece v. Scoggins, 506 F.2d 967; Beverly Hills Bancorp v. Commercial Paper Holders, 753 F.2d 1334; Elias v. Connett, 908 F.2d 521; Fontenot v. Upjohn Co., 780 F.2d 1190; Friednash v. Commissioner, 209 F.2d 601; Garrett v. City & County of San Francisco, 818 F.2d 1515; Goodwin v. United States, 935 F.2d 1061; Hall v. Hawaii, 791 F.2d 759; Hancock v. Montgomery Ward LTDT, 787 F.2d 1302; James v. Gable, 732 F.2d 49; McPartin v. Commissioner, 653 F.2d 1185; and Patty Precision v. Browne & Sharpe Manufacturing, 742 F.2d 1260. Others would include: Bullock v. Latham, 306 F.2d 45; Butz v. Economou, 438 U.S. 478; In Re Price, 42 F3d 1068; Jensen v. IRS, 835 F.2d 196; LaFollette v. U.S., 176 F.Supp. 192; Lassoff v. Gray, 266 F.2d 745; L.O.C. Industries, Inc. v. United States, 423 F.Supp. 265; Rodriguez v. United States, 629 F.Supp. 333; U.S. v. Bonaguro, 294 F.Supp. 750; White v. Commissioner, 537 F.Sup. 679; U.S. ex. Rel. Brooks v. Clifford, 490 F.2d 706; U.S. v. Heffner, 420 F.2d 809; and Yannacelli v. Nash, 354 F.Supp. 143.

"Stare decisis" mandates these cases be considered by the courts below. Both Allisons and the United States have focused on the Condo case. (See United States v. Condo, 782 F.2d 1502). The courts below have also invoked Condo. Allisons

maintain that Condo supports their propositions and arguments made in this case. Condo raises precedents and invokes stare decisis, as it is based upon court rulings in Flores v. United States, 551 F.2d 1169; General Motors Leasing v. United States, 429 U.S. 338; Camara v. Municipal Court, 387 U.S. 523; In Re Gerwig, 461 F.Supp. 449; and Enochs v. Williams Packing & Navigation Co., 370 U.S. 1. These are all cases Allisons have raised in the courts below, to no avail. Condo and its precedents support the contentions of Allisons, and conflict with the court decisions below.

Other than Condo, the above-identified cases have not been challenged or distinguished apart from the propositions raised by Allisons in the court decisions below.

(C) UNIQUE STATUS OF PETITIONERS:

Allison maintains that he has a unique status which makes the federal income tax inapplicable to himself. He consistently challenged on many occasions the validity and legality of the jurisdiction, authority, and venue of IRS, without receiving a direct response.

In this case, specifically, Mr. Allison did directly challenge the authority, jurisdiction, and venue of IRS, with Agent Bouldin. Instead of responding to these fundamental challenges, Agent Bouldin instituted actions which resulted in wrongful and illegal search and seizure of Allisons' real and personal properties, and ultimately wrongful and illegal sale of those properties. IRS not only seized and sold Mr. Allison's properties, against whom they made alleged claims, but seized and sold the solely-owned property of Martha J. Allison, against whom IRS admits it has no

claims or controversies. Allisons have challenged the authority, jurisdiction, and venue of IRS, both in the original Bankruptcy action and in the Adversarial Proceeding, but the courts below refused to address those challenges.

It was wrong for IRS to seize and sell Martha J. Allison's solely-owned real property, in an attempt to satisfy the alleged federal income tax deficiencies of her spouse, Ronald J. Allison. In Raffaele v. Granger, 196 F.2d 620 (1952), that court held:

> "The United States cannot take property from an innocent spouse to satisfy the tax obligation of a delinquent spouse",

and, further, that

> "A statute prohibiting suit to restrain collection of taxes does not prevent judicial interposition to prevent the collector of internal revenue from taking the property of one person to satisfy the tax obligations of another."

In addition to the challenges in the Bankruptcy case and the Adversarial action, Allison has challenged IRS authority, jurisdiction, and venue as follows, including:

(a) Demand for Proof of Authority, Jurisdiction, & Venue, in Personam & In Rem, dated November 6, 1996, and served on IRS Agent Bouldin, by certified mail.

(b) Affidavit of Facts Establishing Status of Citizenship, dated March 31, 1992, and filed with the Clerk & Recorder for Rosebud County, Montana.

(c) Affidavit & Notice of Ronald J. Allison, Affidavit of Declaration of Title as Holder

of Quiet Title to One's Self, and Social Security Revocation of Ronald J. Allison, all dated July 4, 1984, and which were all served upon IRS, the Social Security Administration, U.S. Attorney General, Health & Human Services, Treasury, the Governor & Treasurer of the State of Montana, Montana Revenue Department, and Mr. Allison's employer then, Bechtel Construction, all by certified mail.

As of the date of this PETITION FOR WRIT OF CERTIORARI, IRS and no one else in the federal government has addressed those challenges. Neither have they established valid, legal authority, jurisdiction and venue over Allison or his real and personal properties. Once jurisdiction is challenged, it is a valid legal maxim that the party attempting to prove it has jurisdiction must come forward with the evidence. "The proponent of a rule or order has the burden of proof." (See 5 U.S.C. 556(d)).

As for IRS's claims against Mr. Allison, that burden has not been met.

Furthermore, Mr. Allison has maintained from the outset, and IRS has not contradicted him, that the sections of the Internal Revenue Code (IRC), which IRS is attempting to apply to him constitute a fraudulent and unconstitutional application, given his status. Sections of 26 U.S.C. that IRS claim apply to Mr. Allison have implementing rules and regulations in 27 C.F.R. 70, which apply to the sale, manufacture, and distribution of alcohol, tobacco, and firearms. Allisons are not engaged in such business, and are not subject to these types of excise taxes. Allison is a natural born, sovereign citizen and resident of the United States of

America, but he is not a citizen or resident of the federal government [United States]. Under 28 U.S.C. 1746, Allisons are "without" the United States, and its jurisdiction, authority, and venue. Allison is a "non-resident" to the state of the forum of the United States [federal] IRS. He is not a resident of the District of Columbia, or any federal reservation, enclave, or instrumentality, nor a federal military reservation, nor is he within any class of persons upon whom the federal IRS has authority to impose a "voluntary" federal income tax.

Mr. Allison is not within the classes of persons subject to the levy and distraint authority of IRS. Under Section 26 U.S.C. 6331, IRS has "limited levy and distraint authority". That section states as follows: "Levy may be made upon the accrued salary or wages of any officer, employee, or elected official of the United States, the District of Columbia, or any agency or instrumentality of the United States or the District of Columbia..."

The Code of Federal Regulations (CFR) expands upon that, in pertinent part, as follows:

> 26 CFR 301.6331-1a(ii) and (iii):
> "Salaries, wages, and other compensation of any officer, employee, or elected or appointed of a state or territory, or of any subdivision thereof, are also subject to the levy to enforce collection of any federal tax; . . ."
> and
> "Wages of Seamen, apprentice seamen, or fishermen employed on fishing vessels are subject to levy."

As IRS had no levy and distraint authority, they also did not have legal authority for the seizure and sale of Allison's property.

Furthermore, Allison is not a taxpayer. He is a "nontaxpayer" so far as the federal income tax definitions. In making their "nontaxpayer" status claim, Allisons rely on the ruling in Long v. Rasmussen, a Montana federal court case, which held:

> "...they [the revenue laws] relate to taxpayers, and not to nontaxpayers. The later are without their scope. No procedure is prescribed for nontaxpayers, and no attempt is made to annul any of their rights and remedies in due course of law." (See Long v. Rasmussen, 281 F236, 238 (D.Ct. Montana, 1922).

The fact remains that Allison is a natural born, sovereign, unenfranchised nontaxpayer with regard to IRS. Allison has revoked his participation in the fraudulent federal Social Security scheme and, as such, had divested himself of any and all contractual ties to the federal government and its revenue raising arm, IRS.

Allison does not meet definitions of a "taxpayer" or a "United States person" as those terms are defined in federal law at 26 U.S.C. 7701(a)(1), (1)(14) and (1)(30). Furthermore, he is not "within the United States", but is "without the United States", as those terms are defined at 28 U.S.C. 1746.

The Supreme Court has previously ruled that an "income tax" is an "excise tax", which is synonymous with a "privilege tax". Mr. Allison is not asserting any privilege, but only his rights, as guaranteed by the Constitution. As he is not

exercising any "privilege" there cannot be imposed on him any "privilege" or "income tax". Conclusion reached by this Court in Pollock v. Farmer's Loan & Trust Co., 158 U.S. 601 (1895), held that "taxation on income was, in its nature, an excise tax" that remains good law today. See also Brushaber v. Union Pacific Railway Co., 240 U.S. 1, and Foster & Co., v. Graham, 154 Tenn. 412. In Idaho Gold Dredging Co. v. Balderston, at 58 ID 692, that Idaho court held that:

> "There can be only two kinds of taxes in the United States. A tax must be either a direct tax, in which it is subject to the rules of apportionment, or a privilege tax. A privilege tax can never be imposed upon an exercise of a right under the constitution. The obligation to pay an excise tax is based upon the voluntary action of the person being taxed in performing the act, or enjoying the privilege, or engaging in the occupation which is the subject of the excise, and the element of absolute and unavoidable demand is lacking."

"If you don't want to pay the tax, simply don't exercise the privilege." People ex. Rel. Attorney General v. Naglee, 1 Cal 232. Income tax is not a tax on income, but a tax imposed upon a privilege, measured in income. In Flint v. Stone Tracy Co., 220 U.S. 107 (1911) this court held:

> "Excises are taxes laid upon the manufacture sale or consumption of commodities within a country, upon licenses to pursue certain regulated occupations, and upon corporate privileges; the requirement to pay such taxes involves the exercise of the privilege..."

Allison, a human being, unlike a corporation, cannot be taxed for the mere privilege of existing and

exercising his constitutional rights. An individual's right to live and own property are natural rights, for the enjoyment of which an excise tax cannot be imposed. (See Redfield v. Fisher, 292 OR 814). The legislature cannot name something to be a taxable privilege unless it is first a privilege. "The right to receive income or earnings is a right belonging to every person and realization and receipt of income is therefore not a privilege that can be taxed." Jack Cole Co. v. McFarland, 337 SW2d 453.

IRS actions against Allisons are not authorized by law. IRS did not just exceed their jurisdiction and authority; they have none.

"A distinction must be here observed between excess of jurisdiction and the clear absence of all jurisdiction over the subject matter. Any authority exercised is usurped authority, and for the exercise of such authority when the want of jurisdiction is known to the judge, no excuse is permissible." Bradley v. Fisher, 13 Wall. 335. Section 26 CFR 601.106 states: "An exaction by the U.S. government, which is not based in law, statutory or otherwise, is a taking of property without due process of law, in violation of the Fifth Amendment to the Constitution..." The rights of Allisons to be protected against fraudulently imposed and unconstitutionally applied federal liens, levies and seizures, prior to any due process of law, is recognized in the Original Organic Constitution and its Articles of Amendment. The unique status of Allisons must be taken into consideration in this matter.

(D) VIOLATIONS OF STATUTES, RULES AND REGULATIONS

Allisons have demonstrated that conduct of IRS and of the courts below violated their rights

guaranteed under the 4th, 5th, 7th and 10th Articles in Amendment to the Original Organic Constitution of the United States of America. Allisons also maintain both IRS and the courts below violated statutory law and applicable implementing rules and regulations. With regard to IRS, this Court needs only to examine the fraud perpetrated upon the courts below through their submission of the falsified and fraudulent "Notices of Sale' and "Delegation Orders" which the U.S. Attorney submitted as evidence in this case. Both 18 U.S.C. 1001 and 26 U.S.C. 7214 were violated by government in the preparation and submission of the fraudulent documents below. The warrantless search and seizure, conducted under "color of law", violated law. The out-of-county Sealed Bid Sale of the seized property violated rules. The Doctrine of "unclean hands" must be applied to IRS.

Allisons raised in their Complaint in the Bankruptcy Adversarial action, some thirteen specific statutory, rule or regulation violations by IRS, even before the search and seizure. None of these violations have been addressed.

The Courts below are just as culpable as IRS. The Bankruptcy Court refused to force IRS into court to raise and defend alleged claims against Allison. Bankruptcy Rule 4007 sets forth procedure for determination of dischargeability of debt and requires filing of a complaint by the creditor. Yet, the Bankruptcy Court would not bring IRS in until an adversarial action was filed. Then, it would not allow meaningful discovery to occur and when, post-hearing, Allisons discovered fraudulent sales documents and delegation orders, the court chose not to examine that fraud. As to the Trust, the Bankruptcy Court refused to apply 27 CFR 70.163, which states: "Any person who mistakenly surrenders to the United States any

property or rights to property not properly subject to levy is not relieved from liability to a third party who owns the property."

Allisons completed timely appeal and election to be heard by District Court rather than the BAPS. (See Appendices A-7 through A-10). At the District Court, on appeal, that issue was not raised. (28 USC 158(a). At District Court, Judge Shanstrom, the same judge who initially issued the "Writ of Entry" used by IRS to search and seize Allisons' properties, continued to improperly sit as an Appellate Judge, reviewing his own prior judicial actions. Allisons requested he recuse himself. He refused. They requested he be disqualified. No action was taken. Judge Shanstrom should have required a warrant and probable cause. He then should have removed himself from the case at the point of the appeal. Instead, without even having the record on appeal, or exhibits, he decided to uphold the Bankruptcy Court's decision. To cover himself, he stayed on the case and denied Allisons' causes of action by denying their preliminary pre-trial motions. Shanstrom also improperly granted costs and fees.

Shanstrom's decision was then appealed to the Ninth Circuit. For the first time, issue of timeliness of appeal from Bankruptcy Court to U.S. District Court was raised to further cover Shanstrom's errors. Even when the panel was presented the actual documentation showing a timely appeal was filed, (See Appendix A-7 through A-10), they disregard the evidence. When timely Petition for Rehearing by the panel was rejected, Allisons sought a Rehearing En Banc. Ninth Circuit never responded. To protect themselves, Allisons made application to Justice O'Connor for an extension of time to file this PETITION FOR WRIT OF CERTIORARI, which was granted and is now before this Court.

IRS's actions against Allisons were a direct result of their challenging authority, jurisdiction, and venue of IRS. IRS's actions were vindictive in nature and constitute actual malice toward Allisons, who were only attempting to assert their Constitutional rights and protections. IRS violated those Constitutional rights, violated Due Process, and violated agency statutes and implementing rules and regulations.

The Court's actions below were just as reprehensible in that those courts condoned the illegal actions of IRS, refused to examine facts and legal precedents presented them, violated their own for operational rules as federal Article III Courts.

There is a very compelling case for review of the Ninth Circuit's MEMORANDUM, by the United States Supreme Court, pursuant to this PETITION FOR WRIT OF CERTIORARI, and such review should be granted.

CONCLUSION

For reasons presented hereinabove, a WRIT OF CERTIORARI should issue from the United States Supreme Court to review MEMORANDUM issued by Ninth Circuit Court of Appeals dated September 26, 2000, as well as review ORDER issued by Ninth Circuit Court of Appeals dated January 2, 2001.

Respectfully submitted 26th of April, 2001.

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